

ANNEX N (LEGAL) TO HQMC REPATRIATION OPLAN

REFERENCES:

a. Uniform Code of Military Justice (UCMJ), 10 U.S.C. Section 801, et seq; Manual for Courts-Martial (MCM), United States ( 2002 edition)

b. DoD Instruction 1300.18, Military Personnel Casualty Matters, Policies and Procedures, December 18, 2000

c. DoD Instruction 2310.4, Repatriation of Prisoners of War, Hostages, Peacetime Government Detainees and Other Missing or Isolated Personnel, November 21, 2000

d. MCO P5800.16A Ch3 of 18 Mar 03 LEGADMINMAN, Chapter 14 Legal Assistance Program

1. PURPOSE:

a. To ensure that returned U.S. Marine prisoners of war, missing in action personnel, or otherwise isolated personnel are afforded, during every stage of processing, the opportunity to fully exercise all rights and privileges which they enjoy under the U.S. Constitution, UCMJ, and other applicable laws, regulations, and directives.

b. To ensure the appropriate legal counseling will be available to all returnees concerning any personal legal problems or other administrative matters.

2. ASSUMPTIONS:

a. Advice on personal legal problems will be necessary due to the length of captivity experienced by the returnees.

b. It is possible in a few isolated cases that some returned U.S. Marine personnel may have violated the UCMJ during captivity and that indications of such violations will surface before or during returnee processing. This could take three forms:

(1) A returnee may make a statement that indicates that another returnee may have violated the UCMJ during captivity (2) A returnee may make a statement indicating that he himself may have violated the UCMJ while in captivity.

(2) Information from other sources may provide a basis for concluding that such returnees may have violated the UCMJ during captivity.

3. POLICY:

a. The purpose of the initial intelligence debriefing is to assist the US fulfill its responsibilities to unrepatriated prisoners of war or detained persons and their families by gathering information about personnel listed as missing in action and prisoners or detained persons not returned. Initial intelligence debriefing does not seek as a primary purpose information related to the personal conduct of the individual and the intelligence debriefer will accordingly not give an Article 31, UCMJ, warning against self-incrimination. Where a warning is considered necessary because of statements by the returnee, action will be taken in accordance with paragraph 3d, 3e, and 3f, following.

b. Issuing an Article 31 warning is the primary responsibility of the person seeking information from a person who is an accused or a suspect of criminal misconduct.

c. The initial intelligence debriefing is not an interrogation process, and the intent and purpose is not to gain information that could be used as the basis for criminal action under the UCMJ. Rather, the purpose is to obtain information as to the status and treatment of prisoners of war/missing in action (PW/MIA) or otherwise detained, missing or isolated personnel to enable the United States to discharge its sovereign responsibility for such personnel in both the international law and domestic law matters involving their detention, treatment, and return.

d. If during, or at the end of the initial intelligence debriefing, a returnee expresses a desire to discuss PW or detained missing, or isolated personnel conduct or misconduct, then, at the conclusion of the debriefing, he may be referred to an investigator of the type that normally handles inquiries into such matters. The investigator, rather than the debriefer, is charged with the responsibility for complying with Article 31, UCMJ.

e. Information reflecting or supporting that an individual is implicated in alleged criminal misconduct will be forwarded to the supporting cognizant Staff Judge Advocate for evaluation. The evaluation will determine whether the debriefer will be required to give an Article 31, UCMJ, warning before continuing the debriefing, or whether a separate investigative case should be initiated, separate and apart from any planned or on-going debriefing. The warnings required by Article 31, UCMJ, will be given in all cases where a follow-on debriefing or a subsequent investigation indicates such a requirement.

f. If a commander, as opposed to a returnee, voices an interest in initiating disciplinary action, or an investigation leading towards disciplinary action of a returnee, he will be advised to report the facts indicating such a course of action to his next higher command.

#### 4. RESPONSIBILITIES:

a. Headquarters, U.S. Marine Corps (HQMC):

(1) HQMC, Office of the Staff Judge Advocate to the Commandant (CMC (SJA)) (may upon request or sua sponte evaluate the facts and circumstances of any given instance of alleged misconduct involving U.S. Marine personnel or civilians accompanying the force to ensure

uniformity and provide guidance as to the appropriate procedure to follow during the debriefing.

(2) During time of war, this responsibility includes a determination as to whether the national security interests require action by the Secretary of the Navy under Article 43(e) UCMJ. This responsibility will be considered by CMC (SJA) before adverse personnel action is initiated against any returnee. Where national security interests are not so involved, any adverse personnel action will be taken in accordance with normal service regulations governing such factual situations.

b. Staff Judge Advocate:

(1) Provide returned personnel and their Next of Kin (NOK) with advice and assistance on their personal legal concerns. This assistance will include information pertaining to claims for loss of personal property, claims against the Foreign Claims Settlements Commission, Insurance, Federal and state taxes, and other matters within the legal assistance program.

(2) Assign judge advocates to provide legal services to the returnees, as required.

(3) Act as legal advisor to the YELLOW RIBBON Processing Team Chief and debriefers, insuring that counsel assigned to individual returnees does not provide such advice.

c. Allegations of Misconduct:

(1) If a returnee voluntarily acknowledges his own misconduct, the debriefer will not pursue any such statements, but will report such facts fully to the cognizant SJA and await further guidance as to whether debriefing should be continued.

(2) Should a returnee voluntarily report misconduct of a fellow prisoner or detainee, the debriefer will record the full particulars. The debriefer will advise the returnee that the purpose of the debriefing is not to gather information as to potential misconduct, and that if the returnee desires to pursue the matter against the fellow prisoner or detainee, he will be provided an opportunity to make his information available to the Naval Criminal Investigative Service (NCIS). If the information pertains to a member of another service, such information will be provided to HQMC, ATTN: CMC (SJA) for transmittal to the service concerned. The YELLOW RIBBON Processing Team Chief, after consultation with the cognizant Staff Judge Advocate, will insure the returnee has reasonable opportunity to pursue such course of action in appropriate cases.

5. SPECIFIC GUIDANCE TO STAFF JUDGE ADVOCATES:

a. Information on Plan:

(1) Any legal questions, other than those specified in (2) below, relating to developing local plans, implementation, Code of Conduct or policy matters should be directed to the Judge Advocate

Division, International and Operational Law Branch, CMC (JAO), 703.614.2793/6799 or DSN 224-2793.

(2) Specific questions on military justice should be directed to the Military Justice Branch, CMC (JAM), 703.614.4250 or DSN 224-4250.

b. Legal Assistance:

(1) Due to the lengthy period of time that returnees may have been held captive, it is anticipated that they may have many complicated legal problems to discuss with legal assistance officers. SJAs will develop local plans to ensure availability of counsel and that necessary priority is given to this function.

(2) Legal assistance officers assigned to this duty will be familiar with all aspects of this Plan. They should be acquainted with the general areas in which it can be anticipated that returnees may have particular legal problems such as the use of powers of attorney by NOK, marital situations, and financial problems to include Federal and state income tax issues. In addition, they should be familiar with Federal legislation relating to prisoners of war (37 USC, Chapter 10, Payments to Missing Persons).

(3) POW/MIA or Detainee Conduct: It is not anticipated or expected that violations of the UCMJ during captivity by returnees will be an issue. The fact that a person has been held in a captive status provides no grounds for suspecting him of any violation of the UCMJ. Attention is invited to the specific limitations on initiating any adverse personnel action set forth elsewhere in this Plan.

(4) Specific questions on legal assistance should be directed to the Legal Assistance Branch, CMC (JAL), 703.614.1266 or DSN 224-1266.

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